

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

ANDY BUXTON,

Petitioner,

V.

**COMMONWEALTH OF PENNSYLVANIA;
THE ATTORNEY GENERAL OF THE
STATE OF PENNSYLVANIA; and
DISTRICT ATTORNEY OF
ALLEGHENY COUNTY**

Defendants.

2:21cv1707

Electronic Filing

MEMORANDUM ORDER

March 28, 2022

Andy Buxton (“Petitioner”) is a former state prisoner and current parolee. This case was initiated on November 22, 2021 with the receipt of the Petition. (ECF No. 1). Petitioner moved for leave to proceed in forma pauperis on December 6, 2021, which was granted on December 21, 2021. (ECF Nos. 3 and 5). The Petition was filed formally on the docket on December 21, 2021. (ECF No. 6).

In the Petition, Petitioner complains of his criminal conviction at Docket No. CP-02-CR-8697-2012 for driving under the influence (“DUI”), in violation of 75 Pa. C.S.A. § 380(a)(1), in the Court of Common Pleas of Allegheny County, Pennsylvania. (ECF No. 6 at 1). This is the same criminal conviction for which he previously sought habeas relief in *Buxton v. SCI-Mercer*, No. 17-62 (W.D. Pa. filed Jan. 13, 2017). *See* No. 17-62, ECF No. 10 at 1 (invoking Petitioner’s convictions at CP-02-CR-8697-2012). (ECF No. 12 at 1). The petition in No. 17-62 was dismissed, and a certificate of appealability denied, on August 18, 2017, because it was clear that Petitioner already had served his entire sentence for that conviction. (No. 17-62, ECF No. 17).

The United States Court of Appeals for the Third Circuit similarly denied a certificate of appealability on November 30, 2017. (No. 17-62, ECF No. 22).

On December 23, 2021, United States Magistrate Judge Maureen P. Kelly issued a Report and Recommendation in which she recommended that the instant Petition be dismissed as a second or successive habeas petition for which the Petitioner had not received permission from the United States Court of Appeals for the Third Circuit to file in the district court. (ECF No. 7 at 3). Judge Kelly further recommended that a certificate of appealability be denied. *Id.* Petitioner timely filed Objections on January 6, 2022. (ECF No. 8).

Petitioner is attacking the same conviction raised in No. 17-62, the sentence for which already has been completed. This Court lacks subject matter jurisdiction. *Maleng v. Cook*, 490 U.S. 488, 492 (1989).

After *de novo* review of the pleadings and documents in the case, together with the Report and Recommendation, ECF No. 7, and the Objections thereto, ECF No. 8, the following order is entered:

AND NOW, this 28th day of March, 2022,

IT IS HEREBY ORDERED that the Petition, ECF No. 6, is **DISMISSED** for lack of jurisdiction.

IT IS FURTHER ORDERED that a certificate of appealability is **DENIED**.

IT IS FURTHER ORDERED the Magistrate Judge's Report and Recommendation, ECF No. 7, as it is supplemented by this Order, is adopted as the opinion of this Court. The Clerk shall mark this case closed.

s/ DAVID STEWART CERCONI
David Stewart Cercone
Senior United States District Judge

cc: The Honorable Maureen P. Kelly
United States Magistrate Judge
(Via CM/ECF Electronic Mail)

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(Via First Class Mail)